

Effective 5/12/2015

Part 7
Alternative Energy Manufacturing Tax Credit Act

63N-2-701 Title.

This part is known as the "Alternative Energy Manufacturing Tax Credit Act."

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-702 Definitions.

As used in this part:

- (1) "Alternative energy" has the same meaning as defined in Section 59-12-102.
- (2)
 - (a) "Alternative energy entity" means a person that:
 - (i) conducts business within the state; and
 - (ii) enters into an agreement with the office that qualifies the person to receive a tax credit.
 - (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).
- (3) "Alternative energy manufacturing project" means a project produced by an alternative energy entity if that project involves:
 - (a) a new or expanding operation in the state of a new or expanding alternative energy entity; and
 - (b) the manufacturing of machinery or equipment used directly in the production of alternative energy.
- (4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:
 - (a) did not exist within the state before:
 - (i) the alternative energy entity entered into an agreement with the office in accordance with Section 63N-2-703; and
 - (ii) the alternative energy manufacturing project began;
 - (b) is not shifted from one location in the state to another location in the state; and
 - (c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.
- (5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy manufacturing project by an alternative energy entity or a new incremental job within the state under the following:
 - (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
 - (b) Title 59, Chapter 10, Individual Income Tax Act; and
 - (c) Title 59, Chapter 12, Sales and Use Tax Act.
- (6) "Tax credit" means a tax credit under Section 59-7-614.8 or 59-10-1030.
- (7) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
- (8) "Tax credit certificate" means a certificate issued by the office that:
 - (a) lists the name of the tax credit certificate recipient;
 - (b) lists the tax credit certificate recipient's taxpayer identification number;
 - (c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and

- (d) includes other information as determined by the office.
- (9) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-703 Tax credits.

- (1)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office, with advice from the board, shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
 - (b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office shall certify:
 - (i) that the alternative energy manufacturing project will generate new state revenues;
 - (ii) the economic life of the alternative energy manufacturing project produced by the alternative energy entity;
 - (iii) that local incentives have been committed or will be committed to be provided to the alternative energy manufacturing project;
 - (iv) that the alternative energy entity meets the requirements of Section 63N-2-704; and
 - (v) that the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.
- (2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office may enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).
- (3)
 - (a) Subject to Subsections (3)(b) through (d), the office may authorize or commit a tax credit under this part that may not exceed 100% of new state revenues generated by the alternative energy manufacturing project.
 - (b) As determined by the office, the office may authorize or commit a tax credit under this section for a time period that does not exceed the lesser of:
 - (i) the economic life of the alternative energy manufacturing project; or
 - (ii) 20 years.
 - (c) The office shall consider economic modeling, including the costs and benefits of an alternative energy manufacturing project to the state and local governments, in determining:
 - (i) the amount of tax credit to authorize or commit in accordance with Subsection (3)(a); and
 - (ii) the time period for which the office will authorize or commit a tax credit in accordance with Subsection (3)(b).
 - (d) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy manufacturing project during that taxable year.
- (4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:
 - (a) annually file a report with the office showing the new state revenues generated by the alternative energy manufacturing project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030;
 - (b) submit to an audit for verification of a tax credit under Section 59-7-614.8 or 59-10-1030;
 - (c) provide the office with information required by the office to certify the economic life of the alternative energy manufacturing project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and

- (d) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.8 or 59-10-1030.
- (5) The office shall annually certify the new state revenues generated by an alternative energy manufacturing project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-704 Qualifications for tax credit -- Procedure.

- (1) The office, with advice from the board, shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.
- (2) A tax credit applicant shall provide the office with:
 - (a) an application for a tax credit certificate;
 - (b) documentation that the tax credit applicant meets the standards and requirements described in Section 63N-2-703 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
 - (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (3)
 - (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
 - (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
- (4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
 - (a) deny the tax credit; or
 - (b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
- (5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
 - (a) enter into the agreement described in Section 63N-2-703;
 - (b) issue a tax credit certificate to the tax credit applicant; and
 - (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.
- (6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
- (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63N-2-703(4).

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63N-2-705 Reporting.

The office shall provide the following information in the annual written report described in Section 63N-2-301:

- (1) the office's success in attracting alternative energy manufacturing projects to the state and the resulting increase in new state revenues under this part;
- (2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
- (3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

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